

## REMARKS

Reconsideration of the present application is respectfully requested. In response to the office action dated June 20, 2006, Applicants have amended claims 1, 4, 12, 30, 31, 32, 34, 35, and 40. Claims 44-48 have been newly added and claims 2 and 29 have been cancelled without prejudice or disclaimer. Therefore, claims 1, 3-12, 15-28, and 30-48 remain for consideration in this application.

Claim 12 was rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Particularly, it is the Examiner's position that the specification does not mention an oxidized polyolefin having a polar functional group. Applicants have amended claim 12 to remove this limitation so that claim 12 recites that the plastomer is at least one homopolymer having a density from about 0.92 to about 1.1 g/cm<sup>3</sup> at 25°C. This limitation is fully supported by the specification on page 11, lines 1-3. Applicants request that this rejection be withdrawn.

Turning now to the prior art-based claim rejections, claim 1 was rejected under 35 U.S.C. 103(a) as being unpatentable over Kubo et al., Sakai et al., or Weier et al. However, the Examiner indicated that dependent claims 2 and 3 would be allowable if rewritten in independent form. Applicants have inserted the limitations of claim 2 into claim 1 and have cancelled claim 2 accordingly. Applicants also note that a typographical error appeared in original claim 2. Claim 2 recited that the amount of crosslinking agent was based on the weight of plastomer. The specification on page 9, lines 12-15 indicates that this percentage is based on the weight of the *elastomer*. Applicants have replaced the word "plastomer" appearing in original claim 2 with "elastomer" so as to be consistent with the specification. Also, Applicants have added that the pellet optionally includes at least one elastomer so as to provide antecedent basis for this claim term. These amendments are supported by the specification in the passage cited above, and also in claim 35 as originally filed.

Applicants have also redrafted the allowable dependent claim 3 as new claim 44. In view of the foregoing amendments, Applicants request that the rejection over Kubo et al., Sakai et al., and Weier et al. be withdrawn.

Claims 4, 5, 8-11, 16, 18-28, 33, 34, 40, 42 and 43 were rejected under 35 U.S.C. 103(a) as being unpatentable over Jiang et al. Of this set, claims 4, 34, and 40 are independent. These independent claims are related in that claim 4 is directed toward a modified asphalt composition, claim 34 is directed toward a process of making a modified asphalt composition, and claim 40 is directed toward a process for producing a hot mix asphalt composition comprising the modified asphalt composition of claim 4 plus aggregate. The Examiner indicated that claim 29 would be allowable if rewritten in independent form. Applicants have inserted the limitations of claim 29 into each of claims 4, 34, and 40, and have cancelled claim 29 accordingly. Therefore, each of these independent claims now contains the same allowable limitations of claim 29. Dependent claims 30-32 have been amended only to change their dependency from cancelled claim 29 to claim 4. Applicants submit that claims 4, 34, and 40 and all claims depending therefrom are in condition for allowance.

Claim 35 was rejected under 35 U.S.C. 103(a) as being unpatentable over Andriolo. Claim 36, which depends from claim 35, was indicated as being allowable. Applicants have inserted a portion of claim 36 into claim 35, namely, the limitation that the plasticizer is oxidized polyethylene. Andriolo does not teach the use of oxidized polyethylene in a process for producing a modified asphalt composition. Claim 36 has been amended so as to recite only the limitation that the elastomer is styrene-butadiene-styrene block copolymer. Applicants submit that claims 35 and 36 are now in condition for allowance.

In the office action, the Examiner indicated that claims 37-39 and 41 are allowed. Also, claims 2, 3, 6, 7, 15, 17, 29-32, and 36 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. As discussed above, the limitations of claim 2 were inserted into independent claim 1, claim 3 was redrafted as new independent claim 44, the limitations of claim 29 were inserted into independent claim 4, claims 30-32 were amended to depend from claim 4, and portions of claim 36 were inserted into independent claim 35. Also, claims 6, 7, 15, and 17 have been redrafted as new independent claims 45-48, respectively.

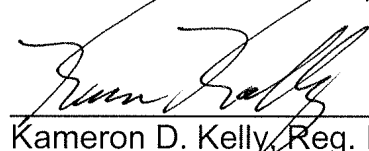
Claims 1-12 and 15-43 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 6-11 and 15-48 of co-pending Applicant No. 10/706,454. As the Examiner notes, this rejection is *provisional* as the conflicting claims have not in fact been patented. As all claims pending in the present application are based upon claims that the Examiner has indicated as being allowed or allowable, only the double patenting rejection remains. According to MPEP 804(I)(B), if the "provisional" double patent rejection in one application is the only remaining rejection in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent. Therefore, Applicants request withdrawal of this provisional double patenting rejection and that a timely Notice of Allowance be issued in this case.

Please deduct the amount of \$850.00 from Deposit Account No. 19-0522 for the 4 additional independent claims, and 1 additional dependent claim. The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 19-0522.

Respectfully Submitted,

HOVEY WILLIAMS LLP,

By



Kameron D. Kelly, Reg. No. 44,181  
2405 Grand Boulevard, Suite 400  
Kansas City, MO 64108-2519  
(816) 474-9050